

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
TEXARKANA DIVISION

SEP 21 2005

CLERK OF DISTRICT COURT

BY

PLAINTIFF

OHIO CASUALTY INSURANCE COMPANY

v.

CASE NO. 02-CV04064

UNION PACIFIC RAILROAD COMPANY;
LORI ALLENBRAND; TRI-STATE TRAFFIC
CONTROL, INC. and GREGORY L. LOGAN

DEFENDANTS

UNION PACIFIC RAILROAD COMPANY;
LORI ALLENBRAND; and TRI-STATE
TRAFFIC CONTROL, INC.

THIRD-PARTY PLAINTIFFS

v.

CROWLEY INSURANCE, INC.; CROLEY
INSURANCE & FINANCIAL, INC., and
B. THOMAS CROLEY, JR.

THIRD-PARTY DEFENDANTS

JUDGMENT

Ohio Casualty Insurance Company's Motion for Summary Judgment (Doc. 116) and Union Pacific Railroad Company's Motion for Summary Judgment on Plaintiff Ohio Casualty Insurance Company's Complaint for Declaratory Judgment and Restitution (Doc. 69) were heard on January 31, 2005. On May 26, 2005 the Court entered a Memorandum Opinion (Doc. 165) and an Order (Doc. 166) concerning, among other things, Plaintiff Ohio Casualty's Motion for Summary Judgment and Counter-Claimant Union Pacific's Motion for Summary Judgment. On June 17, 2005 Lori Allenbrand and Tri-State Traffic Control, Inc. filed Stipulations (Doc. 179). On August 8, 2005, Union Pacific Railroad Company and Ohio Casualty Insurance Company filed Stipulations (Doc. 186).

From the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, arguments of counsel and other matters, things and proof before the

This document entered on docket in
compliance with Rule 58 and 79(a),
FRC
on 9/26/05 by C. Power

Court, the Court finds that:

1. For the reasons set forth in the Memorandum Opinion (Doc. 165) and Order (Doc. 166) filed May 26, 2005, there is no genuine issue as to a material fact concerning liability on the claim for restitution of Ohio Casualty Insurance Company against Union Pacific Railroad Company (Doc. 122). As a result of the Stipulations (Doc. 186) filed August 8, 2005, there is no genuine issue as to a material fact concerning damages on the claim for restitution of Ohio Casualty Insurance Company against Union Pacific Railroad Company. Ohio Casualty Insurance Company is therefore entitled to judgment for restitution against Union Pacific Railroad Company in the sum of \$3,034,565.76, plus pre-judgment interest thereon from April 7, 2003 through the date of entry of this judgment at the rate of 6% per annum as prescribed by Article 19, Section 13, of the Arkansas Constitution.
2. For the reasons set forth in the Memorandum Opinion (Doc. 165) and Order (Doc. 166) filed May 26, 2005, there is no genuine issue of a material fact concerning the Counterclaim of Union Pacific Railroad Company against Ohio Casualty Insurance Company (Doc. 164). That Counterclaim should be dismissed with prejudice.
3. The claims for declaratory relief asserted by Plaintiff Ohio Casualty Insurance Company and by Counter-Claimant Union Pacific Railroad Company (Doc. 122) were determined by the Court in its Memorandum Opinion (Doc. 165) and Order (Doc. 166). For the reasons discussed in such Opinion and Order, Ohio Casualty

Insurance Company is entitled to a declaration that it had no duty to defend Union Pacific Railroad Company on any claim asserted against it in the *Johnson Litigation*, nor did it have any duty to pay any claim asserted against Union Pacific Railroad Company in that litigation.

4. In an Order filed June 13, 2005 (Doc. 176), the third-party claims of Union Pacific Railroad Company, Lori Allenbrand and Tri-State Traffic Control, Inc. against Crowley Insurance, Inc., Croley Insurance & Financial, Inc. and B. Thomas Croley, Jr. were dismissed with prejudice.
5. Pursuant to the Stipulations filed on June 17, 2005 (Doc. 179), the Counterclaim of Lori Allenbrand and Tri-State Traffic Control, Inc. against Ohio Casualty Insurance Company (Doc. 60) should be dismissed with prejudice.
6. Third-Party Plaintiff Union Pacific Railroad Company and Third-Party Defendants Twin City Fire Insurance Company and The Hartford Casualty Insurance Company have announced to the Court that the claims between them have been settled. Therefore, the Third-Party Complaint of Union Pacific Railroad Company against Twin City Fire Insurance Company and The Hartford Casualty Insurance Company (Doc. 56) should be dismissed with prejudice.

It is, therefore, hereby ORDERED, DECREED, ADJUDGED and DECLARED that:

- A. Plaintiff Ohio Casualty Insurance Company have and recover of and from the defendant, Union Pacific Railroad Company, the sum of \$3,478,526.80, with interest thereon at the rate of 3.84% percent per annum as provided by law, and its costs of action, for all of which execution may issue as provided by law.

- B. Plaintiff Ohio Casualty Insurance Company had no duty to defend Union Pacific Railroad Company on any claim asserted against it in the *Johnson Litigation*, nor did Ohio Casualty Insurance Company have any duty to pay any claim asserted against Union Pacific Railroad Company in that litigation. Plaintiff Ohio Casualty Insurance Company and Defendants Union Pacific Railroad Company, Lori Allenbrand, Tri-State Traffic Control, Inc. and Gregory L. Logan are all bound by this declaration and determination.
- C. The counterclaim of Union Pacific Railroad Company against Ohio Casualty Insurance Company be, and is hereby, dismissed with prejudice.
- D. The Counterclaim of Lori Allenbrand and Tri-State Traffic Control, Inc. against Ohio Casualty Insurance Company be, and is hereby, dismissed with prejudice.
- E. The Third Party Complaint of Union Pacific Railroad Company against Twin City Fire Insurance Company and The Hartford Casualty Insurance Company be, and is hereby, dismissed with prejudice and with each party to that Third-Party Complaint bearing its own costs.
- F. Each and every other claim not referenced above is hereby dismissed with prejudice.

DATED: September ²¹~~14~~, 2005.

U. S. DISTRICT COURT
WESTERN DISTRICT ARKANSAS
FILED

SEP 21 2005

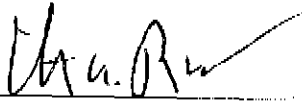
CHRIS A. JOHNSON, CLERK

BY

DEPUTY CLERK

HONORABLE HARRY F. BARNES
U. S. DISTRICT COURT

APPROVED AS TO FORM:



Elton A. Rieves IV, lawyer for
Ohio Casualty Insurance Company



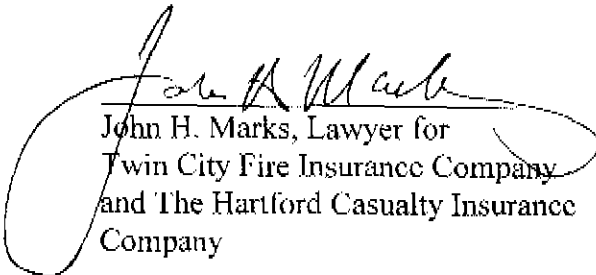
Sean F. Rommel, lawyer for
Union Pacific Railroad Company



Robert L. Henry, III, lawyer for
Lori Allenbrand and Tri-State
Traffic Control, Inc.

 ^{by ca}

Stephen A. Matthews, lawyer for
Crowley Insurance, Inc., Croley
Insurance & Financial, Inc. and
B. Thomas Croley, Jr.



John H. Marks, Lawyer for
Twin City Fire Insurance Company
and The Hartford Casualty Insurance
Company

Prejudgment Interest Calculations

April 7, 2003	\$3,034,565.79
April 7, 2004	\$182,073.90
April 7, 2005	\$182,073.90
September 14, 2005 (160 days since April 7) $(\$182,073.90 \div 365 \text{ days}) \times 160 \text{ days} = \$79,813.21$	\$79,813.21
Total:	\$3,478,526.80